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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON

10 BRITTANY EASTON,

11 Plaintiff,

12 v.

13 ASPLUNDH,

14 Defendant.  
15

CASE NO. 2:16-cv-01694 RSM  
RSM

STIPULATED PROTECTIVE ORDER

16 1. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential, proprietary, or  
18 private information for which special protection may be warranted. Accordingly, the parties  
19 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The  
20 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
21 protection on all disclosures or responses to discovery, the protection it affords from public  
22 disclosure and use extends only to the limited information or items that are entitled to  
23 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
24 parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged: Any records produced by a HIPAA-covered entity as defined  
4 by 45 C.F.R. 160.103, which has received a request or subpoena for Plaintiff’s protected health  
5 information.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as  
8 defined above), but also (1) any information copied or extracted from confidential material; (2)  
9 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
10 conversations, or presentations by parties or their counsel that might reveal confidential material.  
11 However, the protections conferred by this agreement do not cover information that is in the  
12 public domain or becomes part of the public domain through trial or otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
15 or produced by another party or by a non-party in connection with this case only for prosecuting,  
16 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
17 the categories of persons and under the conditions described in this agreement. Confidential  
18 material must be stored and maintained by a receiving party at a location and in a secure manner  
19 that ensures that access is limited to the persons authorized under this agreement.

20 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the designating party, a receiving party may  
22 disclose any confidential material only to:  
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1 (a) the party's counsel of record in this action,  
2 treating physicians, other healthcare providers, insurance carriers, or other entities from whom  
3 damages, compensation, or indemnity is sought and any entity performing or monitoring  
4 adjustment activities on behalf of such insurance carrier or other entity and/or their employees  
5 agents, or third-party administrators for any of the parties involved in the litigation; in any  
6 proceeding for health oversight activities as permitted under 45 C.F.R. 164.512, court reporters  
7 and other similar vendors to the parties and their attorneys, as well as the professional and  
8 support staff of all of the above;

9 (b) experts and consultants to whom disclosure is reasonably necessary for this  
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of  
13 confidential material, provided that counsel for the party retaining the copy or imaging service  
14 instructs the service not to disclose any confidential material to third parties and to immediately  
15 return all originals and copies of any confidential material;

16 (f) any mediator;

17 (h) the information contained in Plaintiff's response to Interrogatory No. 7 of  
18 Defendant's First Interrogatories and Requests for Production to Plaintiff may not be disclosed  
19 to anyone under any circumstances, except as outlined above. Specifically, this information  
20 must not, under any circumstances be disclosed to any individual at Asplundh Tree Experts, Co.,  
21 except Christopher Hein and Tyler Mizvitowicz, for any purpose, whatsoever.

22 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
23 referencing such material in court filings, the filing party shall confer with the designating party

1 to determine whether the designating party will remove the confidential designation, whether the  
2 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
3 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
4 standards that will be applied when a party seeks permission from the court to file material under  
5 seal.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
8 or non-party that designates information or items for protection under this agreement must take  
9 care to limit any such designation to specific material that qualifies under the appropriate  
10 standards. The designating party must designate for protection only those parts of material,  
11 documents, items, or oral or written communications that qualify, so that other portions of the  
12 material, documents, items, or communications for which protection is not warranted are not  
13 swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
16 unnecessarily encumber or delay the case development process or to impose unnecessary  
17 expenses and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated  
19 for protection do not qualify for protection, the designating party must promptly notify all other  
20 parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
22 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
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1 be clearly so designated before or when the material is disclosed or produced.

2 (a) Information in documentary form: (e.g., paper or electronic documents and  
3 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
4 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
5 confidential material. If only a portion or portions of the material on a page qualifies for  
6 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
7 making appropriate markings in the margins).

8 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
9 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
10 protected testimony, without prejudice to their right to so designate other testimony after  
11 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
12 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

13 (c) Other tangible items: the producing party must affix in a prominent place on  
14 the exterior of the container or containers in which the information or item is stored the word  
15 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
16 the producing party, to the extent practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
18 designate qualified information or items does not, standing alone, waive the designating party’s  
19 right to secure protection under this agreement for such material. Upon timely correction of a  
20 designation, the receiving party must make reasonable efforts to ensure that the material is  
21 treated in accordance with the provisions of this agreement.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
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1 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
3 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
4 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
5 original designation is disclosed.

6       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
7 regarding confidential designations without court involvement. Any motion regarding  
8 confidential designations or for a protective order must include a certification, in the motion or in  
9 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
10 conference with other affected parties in an effort to resolve the dispute without court action. The  
11 certification must list the date, manner, and participants to the conference. A good faith effort to  
12 confer requires a face-to-face meeting or a telephone conference.

13       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
14 intervention, the designating party may file and serve a motion to retain confidentiality under  
15 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
16 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
17 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
18 other parties) may expose the challenging party to sanctions. All parties shall continue to  
19 maintain the material in question as confidential until the court rules on the challenge.

20 7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
21       LITIGATION

22       If a party is served with a subpoena or a court order issued in other litigation that compels  
23 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
24 party must:

1 (a) promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
7 the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized  
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
14 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
15 Agreement to Be Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
21 provision is not intended to modify whatever procedure may be established in an e-discovery  
22 order or agreement that provides for production without prior privilege review. Parties shall  
23 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

1 Within 60 days after the termination of this action, including all appeals, each receiving  
2 party must return all confidential material to the producing party, including all copies, extracts  
3 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
4 destruction.

5 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
6 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
7 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
8 work product, even if such materials contain confidential material.

9 The confidentiality obligations imposed by this agreement shall remain in effect until a  
10 designating party agrees otherwise in writing or a court orders otherwise.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
12

13 DATED: \_\_\_\_\_  
14 Attorneys for Plaintiff

15 DATED: \_\_\_\_\_  
16 Attorneys for Defendant

17 PURSUANT TO STIPULATION, IT IS SO ORDERED this 13<sup>th</sup> day of April 2017.  
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RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
5 read in its entirety and understand the Stipulated Protective Order that was issued by the United  
6 States District Court for the Western District of Washington on [date] in the case of  
7 **BRITTANY EASTON v. ASPLUNDH TREE EXPERTS, CO., Case No. 2:16-cv01694.**

8 I agree to comply with and to be bound by all the terms of this Stipulated Protective  
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
11 manner any information or item that is subject to this Stipulated Protective Order to any person  
12 or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for  
14 the Western District of Washington for the purpose of enforcing the terms of this Stipulated  
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16  
17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_

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